

FILED

April 17, 2007

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

FARID HAKIMI, D.P.M.

SUPPLEMENTAL ORDER
ASSESSING COSTS

This matter was reopened before the State Board of Medical Examiners (the "Board") on June 14, 2006, for the limited and sole purpose of determining the amount of costs to be assessed against respondent Farid Hakimi, D.P.M.¹ As set forth in detail in our Order filed on May 10, 2006 (nunc pro tunc on April 19, 2006), we previously determined that respondent Farid Hakimi's license to practice podiatry in New Jersey was to be suspended for a period of five years, with not less than eighteen months to be served as a

¹ As noted above, this matter was considered by the Board on June 14, 2006, and a decision to assess all costs against respondent was then made by the Board. The Board's decision was announced in open session on June 14, 2006, and then approved by a unanimous vote of Board members present.

Upon review, it appears that a formal written Order setting forth the rationale for the Board's supplemental action has not been entered, and we are therefore presently issuing and filing the within Order which sets forth the basis for the Board's action. Although our intent on June 14, 2006 was that respondent should have then paid the costs assessed in full (or then started paying assessed costs pursuant to such schedule that the Board might approve, see *infra*), because a written Order was not previously entered, we will afford respondent 15 days from the date of entry of this Order to either pay the cost assessment in full, or to make arrangements satisfactory to the Board to pay the assessed costs over time.

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period of active suspension and the remainder to be stayed to be served as a period of probation. In addition, we previously affirmed ALJ Klinger's recommendations that respondent should be assessed \$20,000 in civil penalties and that he should be assessed the costs of this matter, however we tabled making a determination upon the precise amount of costs to assess so as to first afford respondent an opportunity to set forth in writing any specific objections he had to the cost application submitted by the Attorney General.²

The Attorney General seeks the assessment of costs in the aggregate amount of \$65,934.66, to include a total of \$56,133.00 in attorney's fees, \$5,444.50 in expert witness fees and transcript costs, and \$4,357.16 in investigative costs. The application for costs is supported by two certifications of Deputy Attorney General Siobhan Krier (setting forth the basis for the attorneys' fees sought), a certification of William V. Roeder, Executive Director of the Board (detailing the expert witness fees and transcript fees which were incurred by the Board), and four certifications (one by Deborah Zuccarelli and three certifications by Richard L. Perry) setting forth the basis for and manner in which the investigative costs were calculated.

² We then ordered that respondent was to submit any objections to the cost application in writing not later than May 9, 2006, and that the Attorney General was to then submit, within ten days, a written response to the objections. We further provided that the matter would then be considered by the Board on the papers, and that following our review a supplemental Order would be entered affixing the amount of costs to be assessed.

Respondent's objections to the Attorney General's cost application were set forth in a letter brief submitted by respondent's counsel, Harry Hill, Esq., dated May 8, 2006.³ Respondent's objections include a claim that the Attorney General's submission was set forth in a "complex form" and should therefore be rejected; a claim that all costs associated with Investigator Sugalski's report of investigation should be barred because the report of investigation was not introduced into evidence at the Office of Administrative Law; a claim that the method of calculating fees "was not followed"; and a claim that costs should be denied because the protection of the public was not the polestar interest which the Attorney General sought to vindicate in this case. Respondent also requests that the Board refrain from assessing costs because the penalties already imposed (i.e., the suspension of his

³ Although respondent was given notice that the only issue that had been reserved by the Board was the issue of the amount of costs to be assessed, respondent's letter brief included arguments that respondent was denied due process and fundamental fairness at the hearings before the Office of Administrative Law, and included recycled challenges to procedural rulings that were made during the pendency of this matter (to include respondent's claim that the entire application for costs should be rejected because ALJ Klinger requested that the Attorney General provide documentation detailing the costs incurred at the conclusion of the case). Respondent also argued that the penalty assessment was unwarranted and should be diminished. Given that we previously considered exceptions to the Initial Decision and thereafter adopted all findings of fact and conclusions of law made by ALJ Klinger, we decline to consider any of respondent's arguments that do not directly address the issue of costs to be assessed. We instead expressly limit our consideration herein to those portions of respondent's submission which were addressed to the quantum or adequacy of the Attorney General's application for costs.

license and the assessment of a \$20,000 civil penalty) are so "significant" that any additional cost assessment would be "[un]warranted."

In a reply letter brief dated May 19, 2006, the Attorney General argued that all costs sought should be assessed against Dr. Hakimi. The Attorney General noted that Dr. Hakimi did not take exception to any specific items that were documented in support of the attorney's fee application. D.A.G. Krier additionally argued that the assessment of all costs was particularly warranted and justified in this case, as the costs were incurred so as to advance the state's interest in protecting the public from a licensee who has subjected a patient to sexual misconduct, as well as engaged in a significant period of unlicensed practice.

Upon review, we are satisfied that cause exists to order the assessment of all costs sought against respondent. As discussed below, we find that the application for costs is fully supported on the record before us, and we reject respondent's plea that any assessment of costs be presently tempered because other significant penalties have been assessed in this matter.

Attorney's Fees: The Attorney General's application for attorney's fees is supported by two certifications of Deputy Attorney General Siobhan Krier. Within her first certification, dated February 10, 2006, DAG Krier traces the procedural history of this matter, from the Board's initial receipt of a complaint regarding Dr.

Hakimi from patient K.G. in December 2001 through the submission of post-hearing briefs (following a five day hearing) in December 2005. By way of a second certification dated February 14, 2006, D.A.G. Krier additionally submitted computer print-outs of time-keeping entries she maintained in this matter.

D.A.G. Krier's submissions detail that she spent a total of 415.8 hours, between September 25, 2003 and February 1, 2006, upon this matter.⁴ The Attorney General asks that D.A.G. Krier's time be compensated at an hourly rate of \$135.

Although respondent was offered an opportunity to raise objections to any specific items sought within the application for attorney's fees, respondent did not offer an objection to any particular work done by D.A.G. Krier in her pursuit of this matter. On our independent review of the documentation supporting the Attorney General's counsel fee application, we are satisfied that the Attorney General has adequately documented the manner in which counsel's time was spent in pursuit of this matter, and we thus find the application for attorney's fees to be consistent with and to meet the standards set for such applications. See Rendine v. Pantzer, 141 N.J. 292 (1995); Poritz v. Stang, 288 N.J. Super. 217 (App. Div. 1996).

⁴ We readily reject respondent's argument that the attorneys' fee application should be rejected because it was submitted in a "complex" form, and instead find that the Attorney General has submitted documentation that thoroughly details the work that was performed in the pursuit of this case.

We are satisfied that the aggregate number of attorney hours spent by D.A.G. Krier in the pursuit of this case, over a time period that spanned over twenty-eight months, is reasonable. We additionally point out that the interests furthered by the pursuit of this matter - most significantly, the paramount interest in protecting the public from practitioners such as Dr. Hakimi who engage in sexual misconduct with patients under the guise of providing medical treatment - clearly support the costs incurred in the prosecution of this matter.

Finally, we conclude that the rate of \$135 hour that is being sought for D.A.G. Krier's time is reasonable. Indeed, respondent has not raised any objection directed at the hourly rate sought by the Attorney General in the fee application, and we point out that the rate of \$135 an hour would appear to be comparable to, if not well below, the rate prevailing in the community for legal work of similar complexity performed by attorneys with similar experience.⁵

⁵ The basis for the rate of \$135/hour is detailed in a June 24, 2005 memorandum from Nancy Kaplan, Acting Director of the Division of Law, detailing that attorneys fees for attorneys with 0-5 years of legal experience are to be recovered at a rate of \$135/hour, as that rate is generally consistent with the rates paid by the State of New Jersey for the services of outside counsel. Respondent's suggestion that "the acceptable method of calculating hourly rates for salaried governmental employees and same was not followed and hence is an instance of non-compliance" is belied by the documentation submitted which sets forth the basis for the hourly rates sought.

We also note herein that our conclusion that the aggregate amount of attorneys' fees sought in this matter is reasonable is only buttressed by the fact that the Attorney General elected not to seek to recover attorney's fees for all work that was done after February 2006 in this case, or for any work that may have been performed by any attorney(s) other than Deputy Attorney General Krier.⁶ While we point out that such time could have been sought in connection with the fee application, and that the reasons that support the assessment of costs generally upon respondent would presumably support the assessment of those additional attorney's fees upon him, we are at this time closing the record in this matter and will not hereafter entertain any application for additional attorney's fees or other costs.

Investigative Costs: We conclude that the investigative costs sought in this matter (which total \$4,357.16) are reasonable and adequately detailed in the certifications submitted, and we assess those costs in full upon respondent. In doing so, we reject respondent's assertion that all or any portion of the investigative costs should not be assessed because the Attorney General elected not to introduce the investigative report prepared by Investigator

⁶ D.A.G. Krier's February 14, 2006 certification, upon which the calculation of attorneys' fees was predicated, details attorney time spent by her in the pursuit of this matter through February 1, 2006. No submission has been made seeking recompense for attorney time spent thereafter, to include time spent preparing for and attending the hearings on exceptions and mitigation held by this Board on April 19, 2006 and the time spent thereafter preparing a brief on the cost application.

Sugalski into evidence at the hearing held at the Office of Administrative Law. Regardless whether or not Investigator Sugalski's report was entered into evidence at the hearing before the Office of Administrative Law, it is clear and beyond dispute that the investigative work performed by the Enforcement Bureau formed a substantial and necessary predicate for the filing of charges against respondent and was integral to the development of this case. We conclude that the costs incurred to prepare the investigative report should therefore be assessed against respondent.

Costs of Transcripts and Expert Witness: Respondent has not made any challenge to the portion of the application seeking the assessment for costs incurred by the Board for transcripts and for expert witnesses (totaling \$5,444.50). As those costs are clearly costs which may be appropriately assessed against respondent, see N.J.S.A. 45:1-25, we order that respondent be assessed those costs in full.

Finally, we reject the suggestions made in respondent's brief that any assessment of costs be withheld, or tempered, given that substantial penalties have already been assessed against respondent. Indeed, we note that we previously held a mitigation hearing, and then concluded that the costs of this matter were in fact to be assessed against respondent. We tabled making a determination of the precise amount of costs to be assessed so as to afford respondent a opportunity to object to specific items sought in

the cost application; not for the purpose of extending respondent another chance to make arguments in mitigation of penalty.

For the reasons set forth above, we conclude that the cost application is reasonable and fully supported on the record before us, that there is no basis to deny any particular item sought as costs, and that respondent should therefore be ordered to pay all costs incurred by the State in this matter.

WHEREFORE, it is on this 11th day of April, 2007

ORDERED:

Respondent Farid Hakimi is ordered to pay costs, to include attorneys' fees, investigative costs and costs incurred by the Board of Medical Examiners, in the aggregate amount of \$65,934.66. The costs assessed are to be paid in full within fifteen days of the date of entry of this Order. In the alternative, respondent may, within fifteen days of the date of entry of this Order, make application to the Board to pay assessed costs pursuant to a schedule of equal monthly payments, to include interest (to be set at a rate consistent with New Jersey Court Rule 4:42-11), provided that any schedule that may be proposed by respondent is deemed to be reasonable and acceptable to the Board.

NEW JERSEY STATE BOARD
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By: Sindy M. Paul, MD
Sindy M. Paul, M.D.,
Board President